LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
DEC 4 1950
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

October Term, 1950.

No. 218.

UNITED STATES OF AMERICA,
Petitioner,

v.

YELLOW CAB COMPANY,
Respondent.

On Writ of Certiorari to the United States Court of Appeals
For the Third Circuit.

Brief of the Yellow Cab Company.

WM. A. SCHNADER,
BERNARD G. SEGAL,
JAMES J. LEYDEN,
Attorneys for Respondent.

SCHNADER, HARRISON, SEGAL & LEWIS,
1719 Packard Building,
Philadelphia 2, Pa.,
Of Counsel.

International, 236 Chestnut St., Phila. 6, Pa.

INDEX TO BRIEF.

	Page
OPINIONS BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	2
STATUTE INVOLVED	2
STATEMENT	2
SUMMARY OF ARGUMENT	4
ARGUMENT	8
I. Where Contribution Between Joint Tort Feasors Is a Substantive Legal Right Under the Lex Loci Delicti, the Tort Claims Act Permits Joinder of the Government in a Federal Court to Enforce Contribution	8
A. In Adopting the FTCA, Congress Exposed the United States to Claims in Every Phase of Negligence Liability to Which a Private Individual Is Subject, Unless the Claim Falls Within One of the Categories of Claims Specifically Exempt	8
B. The Legislative History of the FTCA Shows No Intent to Prohibit Impleader of the United States as a Third-Party Defendant	19
II. The Government's Fears as to Possible Procedural Difficulties in Other Cases Furnish No Basis for Judicial Amendment of the Act	28
A. The Non-Jury Provisions in the Act	28
B. The Venue Provisions of the Act	29
C. The Permissive Appeal to the Court of Claims Provided in the Act	30

INDEX TO BRIEF (Continued).

Page

D. The United States Will Not Be Required to Defend the Same Suit Twice if Impleader and Joinder Are Permitted 32

III. Contribution Like Subrogation Rests Not on Contract But on General Principles of Equity 33

CONCLUSION 38

APPENDIX. The Federal Tort Claims Act of 1946, Chapter 20, 60 Stat. 842, U. S. Code, 1946 Ed., Title 28 39

CASES CITED.

Page

Aetna Life Ins. Co. v. Middleport, 124 U. S. 534 (1888) 33, 34

Aetna Casualty and Surety Co. v. United States, 170 F. (2d) 469 (C. A. 2nd, 1948) 16

Auto Owners' Protective Exchange of Kankakee v. Edward, 82 Ind. App. 558, 136 N. E. 577 (1922) .. 35

Bates v. United States, 76 F. Supp. 57 (D. C. Neb., 1948) 17

Brooks v. United States, 337 U. S. 49 (1949) 5, 9, 11, 12, 13, 26

Bullock, et al. v. United States, et al., 72 F. Supp. 445 (D. C. N. J., 1947) 17

Canadian Aviator, Ltd. v. United States, 324 U. S. 215 (1945) 26

Cheesebrough v. Millard, 1 Johns. Ch. 413 (1815) ... 33

Duplex Printing Press Company v. Deering, 254 U. S. 443 (1921) 19

Englehardt v. United States, et al., 69 F. Supp. 451 (D. C. Md., 1947) 13, 16, 29

Farmer v. Union Ins. Co. of Indiana, 146 Miss. 600, 111 So. 584 (1927) 35

Fisher v. Diehl, 156 Pa. Superior Ct. 476 (1944) 13

Gadsden v. Brown, Speer's Eq. (So. Car.) 37 (1843) .. 33

Goldman, et al. v. Mitchell-Fletcher Company, 292 Pa. 354 (1928) 13, 33

Hoover v. Epler, 52 Pa. 522, 524 (1866) 33

Maryland Motor Car Ins. Co. v. Haggard, Civ. App. Tex., 168 S. W. 1011 (1914) 35

Old Colnoy Insurance Co. v. United States, 168 F. (2d) 931 (C. A. 6th, 1948) 15

Packard Motor Car Co. v. National Labor Relations Board, 330 U. S. 485 (1947) 19

CASES CITED (Continued).

Page

Prairie State Bank v. United States, 164 U. S. 227 (1896) 33, 34

Service Fire Ins. Co. v. Powell, 70 Ga. App. 213, 27 S. E. 2nd 896 (1943) 35

Smith v. Yellow Cab Co., 288 Pa. 85 (1927) 35

Southern Surety Co., et al. v. Commercial Casualty Ins. Co., et al., 31 F. (2d) 817 (C. A. 3rd, 1929), cert. denied, 280 U. S. 577 (1929) 33, 34

State of Maryland v. Manor Real Estate and Trust Co., et al., 83 F. Supp. 91 (D. C. Md., 1949) 17

United States v. Aetna Casualty & Surety Co., 338 U. S. 366 (1949) 5, 14, 15, 18, 26, 29, 32, 33, 34

United States v. Sherwood, 312 U. S. 584 (1941) 25

Universal Credit Co. v. Service Fire Ins. Co. of New York, 69 Ga. App. 357, 25 S. E. 2nd 526 (1943) ... 35

STATUTES AND AUTHORITIES CITED.

	Page
Act of March 3, 1887, 24 Stat. 505, 28 U. S. C. A., section 41 (20)	8
Act of June 25, 1910, 36 Stat. 851, 35 U. S. C. A., section 68	8
Admiralty Rule 56	7, 19
Annotation 50 A. L. R. 1058 et seq.	37
Bispham's Principles of Equity, 10th Ed., Section 338	33
Blashfield, Cyc. of Automobile Law Practice, Vol. 6:	
Section 4171, page 416	35
Section 4181, page 427	35
C. C. H., Insurance Law Reporter, Sec. 902,001, et seq.	32
Contribution Among Tort-Feasors Act, June 24, 1939, P. L. 1075, sec. 1, 12 P. S. § 2081	13
Federal Rules of Civil Procedure:	
Rule 14	18
Rule 14 (a)	33
Rule 17a	18
Federal Tort Claims Act of 1946, 60 Stat. 842, U. S. Code, 1946 Ed., Title 28, Sections 921-46:	
Section 410 et seq.	2, 3, 4, 5, 6, 8, 9, 10, 11, 18, 19, 20, 21, 39
8 F. R. D. 3	29
Gottlieb, Georgetown Law Journal, November 1946, p. 36	25
H. R. 181	6, 21
House Report No. 1287, 79th Cong., 1st Sess. (1945)	6, 21, 22
Hearings Before the Committee on the Judiciary, House of Representatives, 77th Cong., 2nd Sess. 1942, on H. R. 5373 and H. R. 6463, p. 2, sec. 301	9, 25
Judicial Code, 28 U. S. C. A. section 41 (20), now 28 U. S. C. Section 1346 (a) (2)	25

STATUTES AND AUTHORITIES CITED (Continued).

	Page
Maryland Code (1939) Art 53, Section 13	36
8 Memoirs of John Quincy Adams (1876) 479-480	8
New York Civil Practice Act (1941), Section 211a	36
Public Vessels Act, 43 Stat. 1112, 46 U. S. C. A., Section 781	9
Restatement of the Law or Restitution Sections 77, 86	35
Suits in Admiralty Act, 41 Stat. 525, 46 U. S. C. A., Section 742	9
Section 743	6, 19
Senate Bill 2177 (Legislative Reorganization Act), Section 4	6, 20
Senate Report No. 1400, 79th Cong., 2nd Sess. (1946)	6, 20, 22, 23
Texas Revised States (Vernon 1936) Art. 2212	36
Trading With the Enemy Act of 1917	11
Uniform Contribution Among Tort Feasors Act, Section 5, 9 Uniform Laws Annotated 161, and Pocket Part, page 28	37
United States Code (1946 Ed.)	
Title 28	1, 3, 8, 30
Title 46	10
Title 50	11

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1950.

No. 218.

UNITED STATES OF AMERICA,

Petitioner,

v.

YELLOW CAB COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Brief of the Yellow Cab Company.

OPINIONS BELOW.

The findings of fact and conclusions of law of the United States District Court for the Eastern District of Pennsylvania on the pleadings and proof (R. 12, 13) and the opinion of that Court on the motion of the United States to set aside the verdict (R. 14-16) are not reported.

The opinion of the United States Court of Appeals for the Third Circuit (R. 35-45) is reported at 181 F. (2d) 967.

JURISDICTION.

The jurisdiction of this Court rests upon 28 U. S. C. 1241 (1), this Court having granted the petition of the United States for writ of certiorari on October 9, 1950.

QUESTIONS PRESENTED.

I. Whether the Federal Tort Claims Act of 1946 subjects the United States to liability for contribution to a joint tortfeasor where the tort was committed in a state in which one joint tortfeasor has a substantive legal right to contribution from the other?

II. Whether under the Federal Tort Claims Act of 1946, the individual tortfeasor, sued in a federal district court, may join the Government as a third-party defendant to enforce his right to contribution?

STATUTE INVOLVED.

This case involves the Federal Tort Claims Act of 1946, 60 Stat. 842 U. S. Code, 1946 Ed., Title 28, Sections 921-46, which is set forth in full in the Appendix, *infra*, pp. 42-45.

STATEMENT.

On December 1, 1946, at a street intersection in Philadelphia, Pennsylvania, a United States mail truck, failing to stop at the intersection, although a "Stop" sign at the intersection required that it do so before proceeding through the intersection, collided with a taxicab of the respondent (R. 12). The original plaintiffs, passengers in the taxicab, commenced suits against the Yellow Cab Company in the United States District Court for the Eastern District of Pennsylvania, there being the required diversity of citizenship and the requisite amounts in controversy.

By leave of court, respondent was permitted to join the United States as a third-party defendant in order to protect its right to contribution (R. 5).

The Government's motions to dismiss the third-party complaints on the ground that they assert derivative claims unauthorized by the Tort Claims Act were denied. The

cases proceeded to trial before a judge without a jury and resulted in findings of fact by the court that the accident was caused by the joint negligence of the drivers of the respective vehicles. Judgments totalling $7800.00 were awarded the plaintiffs against respondent and judgments for one-half of that amount, $3900.00, were entered in favor of respondent against the United States.

The Government's motions to set aside the verdicts and judgments against it were denied, and on appeal, the judgments of the District Court were affirmed by a unanimous court.

The court below concluded that although it seems possible that the language of Section 1346 (b) of revised Title 28, United States Code, may be somewhat narrower in effect than the pertinent portions of Section 410 (a) of the Federal Tort Claims Act, 28 U. S. C. (1946 ed.) Section 931 (a), that issue was not before it, the rights of the parties having accrued before September 1, 1948 (R. 38).

The court then considered the cases as if the primary issue were whether the Federal Tort Claims Act of 1946 permitted a plaintiff to join the United States and an individual as defendants, stating, however, that the question presented was "in reality" whether the United States was liable to contribution (R. 36). The court concluded that (1) joinder of the United States and an individual as defendants was authorized by the Act (R. 43), and (2) in view of the broad, sweeping waiver of sovereign immunity, with liability on the Government as if it were a private individual, contribution, not being within any of the excepted categories of claims, was cognizable, and could be enforced by impleading the United States as a third-party defendant (R. 43-45).

SUMMARY OF ARGUMENT.

The Federal Tort Claims Act was passed by Congress in 1946, 60 Stat. 842, U. S. Code, 1946 Ed., Title 28, Sections 921-46. By that Act, Congress lifted the immunity of the sovereign from suit on claims in negligence and tort generally,—a legislative reform long overdue.

The language adopted by Congress in Section 410 (a) of the Act clearly demonstrated an intent to waive governmental immunity from suit on claims in every phase of negligence liability and to place the Government on a parity with private individuals.

That section made the United States liable on "any claim * * * accruing * * * on account of damage to or loss of property or on account of personal injury or death * * * under circumstances where the United States, if a private person, would be liable to the claimant * * * in accordance with the law of the place where the act or omission occurred" and further stated that the United States "shall be liable in respect to such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances", except as to interest prior to judgment or punitive damages.

A clearer or more sweeping waiver of governmental immunity to suit could not be easily phrased. The United States was made liable if a private individual would be liable. Therefore, where the tort occurs in a state in which contribution between joint tortfeasors is a substantive legal right,—as it is in Pennsylvania where the accident giving rise to the claims occurred,—the individual tortfeasor has a claim for contribution from its joint tortfeasor, the United States.

That Congress intended to waive immunity from suits on claims for contribution is further made evident by the

fact that in Section 421, twelve categories of claims were expressly excluded from operation of the Act. The language used in Section 421 was clear and showed painstaking care. It left no doubt that Congress knew the precise types of claims it desired to exempt, even to so remote a tort claim as one for damages caused by the fiscal operation of the treasury or by the regulation of the monetary system. Nevertheless, contribution was not mentioned.

In construing the Federal Tort Claims Act, this Court in **Brooks v. United States**, 337 U. S. 49, 51 (1949), forcefully pointing out that the statute's terms are clear and that it contains twelve specifically excepted categories of claims, refused to accept a contention that a type of claim not included in the twelve exceptions was intended to be excluded from operation of the Act. In **United States v. Aetna Casualty & Surety Co.**, 338 U. S. 366, 383 (1949), this Court, in refusing to hold as an excluded class another type of liability not mentioned in the twelve exceptions, reiterated the doctrine that where consent of the sovereign from suit has been announced, it should not be narrowed by refinement of construction.

To grant the Government's contention in this case would require judicial amendment of the Federal Tort Claims Act by the addition of a thirteenth category of liability to the twelve specifically excluded in Section 421.

Since the language in the Federal Tort Claims Act is clear and unambiguous, resort to legislative history is inappropriate. Nevertheless, in its brief, the Government devotes many pages to the legislative history of this Act, and prior bills which never became law, in an attempt to show that the Act does not mean what it says. And in doing so, it has had to explain away more than it has been able to adduce in its favor.

Actually, the history of bills providing waiver of the sovereign immunity of the United States from claims on account of personal injury or death contains so many vac-

illations as to what should and what should not be in the Act that it is not really very helpful at all. Certainly the legislative history does not show an intent to prohibit impleader of the United States as a third party defendant. On the contrary, Senate Report No. 1400, 79th Cong., 2nd Sess. (1946), accompanying Senate Bill 2177,—the Legislative Reorganization Act,—Section 4 of which contained, except for minor changes not pertinent here, the Federal Tort Claims Act as finally adopted, shows that whatever may have been intended in earlier bills, the concept of non-joinder was there discarded.

In that report,—Senate Report No. 1400, 79th Cong., 2nd Sess. (1946),—it is stated that "with respect to this type of claim the government should be put in the same position as any private party." Coupled with this language, there is in that report a deliberate deletion of the statement made in House Report No. 1287, 79th Cong., 1st Sess. (1945), accompanying H. R. 181, a bill then on the House Calendar, that joinder of the United States as a co-defendant was not to be permitted. That deletion in the Senate Report stands out because the substance of all of the paragraphs in the House Report, which preceded the non-joinder statement there made, were incorporated in the Senate Report.

So that in view of the broad, sweeping waiver of immunity, and the statement that liability of the United States was to be the same as that of a private individual unless the claim fell within the twelve categories of specifically excepted claims, it is clear the United States in this case is liable to contribution as a joint tortfeasor. And that liability was properly determined by impleading the United States as a third-party defendant.

This conclusion is supported by the practice in admiralty under Section 3 of the Suits in Admiralty Act, 46 U. S. C. A., Section 743, where the language employed is very similar to that contained in Section 410 (a) of the

Federal Tort Claims Act and where it is conceded that the United States can be impleaded by a respondent under Admiralty Rule 56.

Finally, the liability for contribution imposed by the broad language in the Act cannot be avoided by conjuring up conceivable procedural difficulties, more seeming than real, which may arise in other cases. Even assuming *arguendo* that such other cases might pose procedural difficulties if they arose, they furnish no justification for judicial amendment of the Act, however much they might justify legislative correction in the future.

Argument.

I.

WHERE CONTRIBUTION BETWEEN JOINT TORT FEASORS IS A SUBSTANTIVE LEGAL RIGHT UNDER THE LEX LOCI DELICTI, THE TORT CLAIMS ACT PERMITS JOINDER OF THE GOVERNMENT IN A FEDERAL COURT TO ENFORCE CONTRIBUTION.

A. In Adopting the FTCA, Congress Exposed the United States to Claims in Every Phase of Negligence Liability to Which a Private Individual Is Subject, Unless the Claim Falls Within One of the Categories of Claims Specifically Exempt.

The Federal Tort Claims Act was passed by Congress in 1946, 60 Stat. 842, U. S. Code, 1946 Ed., Title 28, Sections 921-46. By that Act, Congress lifted the immunity of the sovereign from suit on claims in negligence and tort generally,—a legislative reform long overdue.[1]

---

[1] As early as February 28, 1832, John Quincy Adams wrote: "There ought to be no private business before Congress. * * * A deliberative assembly is the worst of all tribunals for the administration of justice." 8 **Memoirs of John Quincy Adams** (1876) 479-480.

The Court of Claims had been established on February 24, 1855, 10 Stat. 612, 28 U. S. C. A., sections 241 et seq., for the chief purpose of entertaining suits on contract against the Government. By Act of March 3, 1887, 24 Stat. 505, 28 U. S. C. A., section 41 (20), commonly referred to as the Tucker Act, concurrent jurisdiction with the Court of Claims was conferred on the United States District Courts over contract claims and other claims "not sounding in tort," against the Government not involving more than $10,000. By the Act of June 25, 1910, 36 Stat. 851, 35 U. S. C. A., section 68, the Government submitted itself to suit for patent infringement.

The plain language of Section 410 (a) of the Tort Claims Act is conclusive of the issues in this case. A clearer or more sweeping waiver of governmental immunity to suit could not be easily phrased.

Section 410 (a) reads as follows (Appendix, p. 42):

"Subject to the provisions of this chapter, the United States district court for the district wherein the plaintiff is resident or wherein the act or omission complained of occurred, including the United States district courts for the Territories and possessions of the United States, sitting without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on **any claim**[2] against the United States, for money only, accruing on and after January 1, 1945, on account of damage to or loss of property or **on account of personal injury or death** caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, **under circumstances where the United States, if a private person, would be liable to the claim-**

The first departure from immunity against suits in tort was made in 1920 by the Suits in Admiralty Act, 41 Stat. 525, 46 U. S. C. A., Section 742, by which the Government subjected itself to suit in the district courts in respect to admiralty and maritime torts involving merchant vessels owned or operated by the Government. This jurisdiction was later extended to include damage caused by public vessels of the United States, 43 Stat. 1112, 46 U. S. C. A., section 781, known as the Public Vessels Act.

Between 1925 and 1935, eighteen tort claims bills were introduced in Congress. See **Brooks v. United States**, 337 U. S. 49, 51, footnote 2. From 1935 to 1946 such bills were regularly introduced. See Hearings before the Committee on the Judiciary, 77th Cong., 2nd Sess., on HR 5373 and HR 6463.

[2] Wherever boldface type appears in this brief the emphasis is ours.

ant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred. Subject to the provisions of this chapter, the **United States shall be liable in respect of such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances**, except that the United States shall not be liable for interest prior to judgment, or for punitive damages. Costs shall be allowed in all courts to the successful claimant to the same extent as if the United States were a private litigant, except that such costs shall not include attorneys' fees."

We do not believe that Congress could have stated more clearly its intent that the United States be subject to liability if a private person would be subject to liability under the law of the *lex loci delicti.*

Accordingly, where the United States and an individual are joint tortfeasors, we submit that a claim for contribution against the United States falls within Section 410 (a) of the Act,—if a private individual would be subject to such liability. If there were any doubt that the language of Section 410 (a), standing alone, was intended to include the right to contribution, that doubt was removed by Congress in Section 421. In that Section, there were enumerated 12 categories of claims to which the Act would not apply. The language used by Congress in enumerating those exempt categories of claims is clear. It shows painstaking care, and leaves no doubt that Congress knew which types of claims it desired to exempt. Contribution is not mentioned.

Section 421 (d) excepted any claim for which a remedy is provided by sections 741-742 or 781-790 of Title 46, relating to claims or suits in admiralty against the United States (Appendix, p. 46). Section 421 (h) excepted any claim arising out of assault and battery, false imprison-

ment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights (Appendix, p. 46). Section 421 (c) excepted claims arising with respect to the assessment or collection of tax or customs duties (Appendix, p. 46). Section 421 (e) excepted any claim arising out of an act or omission of an employe of the government in administering the provisions of Sections 1-38 of the Appendix to Title 50, which includes the Trading with the Enemy Act of 1917 (Appendix, p. 46). Section 421 (i) excepted any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system (Appendix, p. 47). Despite the apparent care with which these exceptions were drafted and some of the rather remote forms of liability covered by them, no exception pertaining to contribution was listed.

The clear import of the inclusion in the Act of those specific categories of excepted claims was stated by this court in **Brooks v. United States**, 337 U. S. 49 (1949). In that case a soldier on leave was killed in a collision between the automobile in which he was riding and a United States Army truck. The lower court entered judgment for the decedent's estate in the suit brought against the United States. The Court of Appeals, Judge Parker dissenting, reversed the judgment, reasoning that in passing the Federal Tort Claims Act, Congress never intended to permit one of its soldiers to sue the Government. This Court, in reversing the action of the Court of Appeals, said, page 51:

> "We agree with Judge Parker. The statute's terms are clear. They provide for District Court jurisdiction over *any* claim founded on negligence brought against the United States. We are not persuaded that 'any claim' means 'any claim but that of servicemen.' The statute does contain twelve exceptions. § 421. None exclude petitioners' claims. One is for claims arising in a foreign country. A second excludes claims arising out of combatant activities of the military or

naval forces, or the Coast Guard, during time of war. These and other exceptions are too lengthy, specific, and close to the present problem to take away petitioners' judgments. Without resorting to an automatic maxim of construction, such exceptions make it clear to us that Congress knew what it was about when it used the term 'any claim.' It would be absurd to believe that Congress did not have the servicemen in mind in 1946, when this statute was passed. The overseas and combatant activities excepti ns make this plain."

When the **Brooks** Case was before the Court of Appeals, Judge Parker, in his dissent had said, 169 F. (2d) 840, 847-848:

"The principal question in the case is whether the court shall read into the act an exception excluding soldiers from the right to recover under its provisions. I see no basis for reading such an exception into the act. Legislation is a matter for Congress, not for the court; and the language used by Congress clearly covers soldiers as well as civilians. It is neither reasonable nor respectful to Congress for the courts to assume that the import of the general language used in the statute was not understood or that language excluding soldiers from the benefit of the act was omitted through inadvertence. • • •

• • • • • •

"Another reason for holding that it was not the intention of Congress to exclude soldiers from the protection afforded by the act is that the act itself lists twelve exceptions to its application under the heading of exceptions and no such exception is listed among them. • • •"

In the present case, there was a collision between a taxicab and a United States mail truck as a result of which

personal injuries were sustained by passengers in the taxicab. In Pennsylvania contribution between joint tort feasors is a substantive legal right. **Fisher v. Diehl,** 156 Pa. Superior Ct. 476, 482 (1944); **Contribution Among Tort-Feasors Act,** June 24, 1939, P. L. 1075, sec. 1, 12 P.S. § 2081; **Goldman, et al. v. Mitchell-Fletcher Company,** 292 Pa. 354 (1928).

The trial court, sitting without a jury, found that the driver of the taxicab and the driver of the mail truck were joint tortfeasors. It entered judgments against the Yellow Cab Company in favor of the plaintiffs, and in turn entered judgments for half the various sums in favor of the Cab Company against the Government.

That, we submit, was the only course which the court could have pursued. To have granted the Government's motion to set aside the verdicts would not have been a strict construction of the Federal Tort Claims Act; it would have constituted an amendment to it.

To paraphrase the holding of this Court in the **Brooks** Case, *supra,* the statute's terms were clear and provided for district court jurisdiction over **any** claim founded on negligence against the United States, except the twelve specifically excepted categories. "Any claim" does not mean any claim except that of a joint tortfeasor asserting his right to contribution against the Government, the joint tort having occurred in a state in which the right to contribution is a substantive legal right. Collision cases make up the bulk of litigated tort claims.[3] Yet such cases were not included in the list of 12 exceptions which Congress incorporated into the Act.

The court below adopted this view (Chief Judge Biggs at R. 43, 44):

---

[3] For a case in which this fact was adduced as further evidence of a Congressional intent not to exclude such cases, see **Englehardt v. United States, et al.,** 69 F. Supp. 451, 454 (D. C. Md., 1947).

"• • • But could contribution from the sovereign to Yellow Cab fall within the purview of the FTCA? Did the waiver of immunity by the sovereign go so far? We think that it did.

"The provisions of Section 410 (a) • • • seem conclusive in this connection for that section conferred exclusive jurisdiction upon the United States district courts to render judgment on any claim against the United States 'on account of personal injury . . .'. Note that the jurisdiction of the United States district courts was not limited to the adjudication of *claims for damages.* The word 'claimant' used in the statute was employed to designate any person who might assert the claim and was *not* limited to one who had sustained damage to his property or injury to his person. In other words a 'claimant' in the eye of the statute was any one who had a claim against the United States *on account* of personal injury or damage to property. Broader phrases or words more likely to embrace liability generally are difficult to imagine. A joint tortfeasor would have a claim on account of personal injury as would a subrogee. This point was settled by the decision of the Supreme Court in United States v. Aetna Surety Co., *supra.* It would seem to have been the intention of Congress to put the United States on a precise parity with the private litigant in suits cognizable under the FTCA. See Moore's Federal Practice, 2nd ed., Vol. 3, pp. 2730-2739."

There are numerous other decisions in which the courts have similarly interpreted the Congressional intent as expressed in this very act.

Courts of Appeals in seven circuits did so in subrogee cases. Those holdings were approved by this Court in **United States v. Aetna Casualty & Surety Co.**, 338 U. S. 366 (1949).

In that case, Chief Justice Vinson said, 338 U. S. 383:

> "• • • In argument before a number of District Courts and Courts of Appeals, the Government relied upon the doctrine that statutes waiving sovereign immunity must be strictly construed. We think that the congressional attitude in passing the Tort Claims Act is more accurately reflected by Judge Cardozo's statement in *Anderson v. Hayes Construction Co.*, 243 N. Y. 140, 147, 153 N. E. 28, 29-30: 'The exemption of the sovereign from suit involves hardship enough where consent has been withheld. We are not to add to its rigor by refinement of construction where consent has been announced.'"

At another portion of this brief (pages 33 to 38), we answer the contention in the government's brief that the fact suits by subrogees are permitted under the Torts Claims Act affords no basis for allowing claims of contribution against the government as a joint tortfeasor. Here we merely quote from two of the opinions of Courts of Appeals sustaining claims by subrogees, because the construction of the Torts Claims Act there applies with equal force to the present situation.

In **Old Colony Insurance Co. v. United States**, 168 F. (2d) 931 (C. A. 6th, 1948) (in which the plaintiff was a subrogee by virtue of payment under a policy of collision insurance), the court said at page 933:

> "**There is nothing ambiguous in the quoted section of the Act. The language used is plain, its meaning is certain and easily understood. There is no room for construction and the contention that because defendant has consented to be sued, the statute must be strictly construed in its favor, is without basis.** See Employers' Fire Ins. Co., et al. v. U. S. 9 Cir., 167 F. 2d 655. The word 'claimant' simply means one who under the Act has a claim against the United States. The phrase 'on

any claim against the United States, for money only, * * * on account of damage to or loss of property * * * caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment' means just what it says. **The Act does not limit the meaning of the word 'claimant' to one who has sustained damage to his property and we are not justified in reading such limitation into it.** See Wojciuk v. United States, D. C., 74 F. Supp. 914. **To do so would be tantamount to amendment by us of the statute, a function which of course is not ours.** As was said by District Judge Medina in Niagara Fire Ins. Co., et al. v. United States, D. C., S. D., 76 F. Supp. 850, 854—'* * * there is every reason to suppose that this particular statute was the result of the most skillful and deliberate draftsmanship and that in its final form it was the culmination of years of patient effort.' **If Congress had intended to exclude subrogees from the benefits of the Act it could readily have included them in the list of the twelve specified exemptions.**"

And in **Aetna Casualty and Surety Co. v. United States,** 170 F. (2d) 469 (C. A. 2nd, 1948) (in which the plaintiff was a subrogee by operation of law under the New York Workmen's Compensation Law), the Court said, p. 472:

"* * * We think, however, that the reiterated requirement that we should treat the United States like a private individual is the more fundamental, and the Congress did not intend to limit the jurisdiction of the district courts more than it is limited by the specific exceptions."

So also in cases in which the plaintiff has joined the United States and an individual as joint tortfeasor defendants. **Englehardt v. United States, et al.,** 69 F. Supp.

451, 452, (D. C. Md., 1947); **Bullock, et al. v. United States, et al.**, 72 F. Supp. 445 (D. C. N. J., 1947); **State of Maryland v. Manor Real Estate and Trust Co., et al.**, 83 F. Supp. 91 (D. C. Md., 1949); **Bates v. United States**, 76 F. Supp. 57, 59 (D. C. Neb., 1948).

We submit that the words adopted by Congress in the Act show a clear intent to waive the sovereign's immunity from suit in all facets of tort and negligence law, with twelve categories of claims excepted; that in claims not falling within the exceptions, the liability of the United States is the same as that of a private individual under the same circumstances; that contribution is a substantive legal right under the law of Pennsylvania; that under the circumstances existing in this case, a private person would be subject to liability to respondent for contribution; that a claim for contribution is not one of the categories of claims from which the Act exempts the United States; and that the United States, therefore, is liable to respondent for contribution.

The only remaining question is whether that right to contribution may be enforced by joinder of the government as a third-party defendant. We cannot improve upon what was said by the Court below on this subject (R. 44):

> "* * * The Pennsylvania law and practice do not require the existence of a joint judgment before a claim for contribution can be enforced against the joint tort-feasor. The Pennsylvania third-party practice is within the purview of Rule 14 (a), FRCP. Separate suits could have been filed against the United States by Yellow Cab, the United States being the sole defendant, and judgments of contribution could thus have been obtained by Yellow Cab. The principle of United States v. Sherwood, 312 U. S. 584, 587-8, arising under the Tucker Act, would be inapplicable even by way

of analogy for such judgments would have been obtained in suits in which the United States was the sole defendant. In the instant cases the learned trial judge could have terminated the proceedings after judgments had been rendered in favor of the Gutmanns and the Howeys against Yellow Cab, and then could have proceeded to give separate trials to the United States on the issue of contribution. Surely the stricture of the Sherwood case, even if it were deemed to be applicable to cases involving joinder of the United States arising under the FTCA, would not serve to require second, separate trials with the United States as the sole defendant, the issue being one of contribution, for such second, separate trials would embrace the same evidence as that already received and would be conducted before the same judge. Cf. United States v. Aetna Surety Co., *supra.*"

The practice for joinder of a third party defendant is provided by Rule 14 of the Federal Rules of Civil Procedure. Section 411, of the Tort Claims Act specifically incorporates by reference the Federal Rules of Civil Procedure except as to "counterclaim and set-off, for interest upon judgments, and for payment of judgment." In the four quoted exceptions, Section 411 provided that the Tucker Act was to apply.

Here again, the express inclusion of four instances in which the Federal Rules of Civil Procedure were not to apply, and the failure to exclude Rule 14, evidences a Congressional intent that third party joinder of the United States under the Federal Rules be permitted. Although the court below did not consider this very persuasive, nevertheless this reasoning would appear to be implicit in the application by this Court in **United States v. Aetna Casualty and Surety Co.**, 338 U. S. 366, 380 (1949) of Rule 17 (a) of the Federal Rules of Civil Procedure in arriving at the holding of that case.

We also suggest that the similiarity between the language adopted by Congress in the Federal Tort Claims Act and that in the Suits in Admiralty Act, 46 U. S. C. A., Section 743, under which the United States can be impleaded under Admiralty Rule 56, showed an intent to subject the Government to claims for contribution, such claims to be assertable by joining the United States as a third-party defendant.

The pertinent section of the Suits in Admiralty Act, 46 U. S. C. A., Section 743, provides:

> "Such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. * * *"

Note the similarity in language to Section 410 (a) of the FTCA which provide for liability in "any claim * * * under circumstances where the United States, if a private person, would be liable * * * the United States shall be liable in respect of such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances * * *".

The comparison and effect of this language in these two acts is discussed by the Court below (R. 42, 43).

We submit, therefore, that contribution is a claim cognizable under the FTCA and that it is properly asserted by impleading the United States as a third-party defendant.

B. The Legislative History of the FTCA Shows No Intent to Prohibit Impleader of the United States as a Third-Party Defendant.

It is hornbook law that where the meaning of the language in a statute is clear and unambiguous, resort to legislative history is inappropriate. **Packard Motor Car Co. v. National Labor Relations Board**, 330 U. S. 485, 492 (1947); **Duplex Printing Press Company v. Deering**, 254 U. S. 443, 474-5 (1921).

That is the precise situation here. We have demonstrated that the language of the Tort Claims Act clearly expressed an intent to make the United States liable to contribution as a joint tortfeasor if a private person would be subject to such liability, and of the right to implead the United States as a third-party defendant to enforce that claim. Even if it were assumed *arguendo* that a statement in a Committee Report indicated a contrary intention, it could not alter the broad language of the Act.

In its brief, the Government devotes many pages to the legislative history of this Act, and prior bills which never became law, in an attempt to show that the Act does not mean what it says. And in doing so, it has had to explain away more than it has been able to adduce in its favor.

Actually, the history of bills providing waiver of the sovereign immunity of the United States from claims on account of personal injury or death contains so many vacillations as to what should and what should not be in the Act that it is not really very helpful at all. Certainly, however, the legislative history does not show an intent to prohibit impleader of the United States as a third-party defendant. On the contrary, careful study of the history in its later stages serves more to support the clear meaning of the words finally enacted than to cast doubt upon them.

In Senate Report No. 1400, 79th Cong., 2nd Sess. (1946), accompanying Senate Bill 2177 (the Legislative Reorganization Act, Section 4 of which contained, except for minor changes not pertinent here, the Federal Tort Claims Act as finally adopted), there is clear evidence of an intent to discard the concept of non-joinder and to treat the United States as a private litigant.

In that Senate Report, it was stated at page 30:

> "Attention is called to the fact that there is now on the House Calendar a bill (HR 181, 79th Cong.)

almost identical with this title. The essential difference is that the House bill puts a maximum limitation of $10,000.00 on claims for which suit may be brought, whereas this title as reported by your committee contains no such limitation. The committee is of the opinion that in view of the banning of private claim bills in the Congress no such limitation should be imposed, **and that with respect to this type of claim the Government should be put in the same position as any private party.**"

The language which we have emphasized confirms the intent to place the Government on a parity with private individuals on all claims not falling within the specific exemptions contained in Section 421. Joinder or impleader necessarily follow. It may be argued that the emphasized language referred only to the reason for dropping the $10,000.00 limit of liability. But if this had been the basis, there would have been no reason to add that language to what was already clear, namely, that since all private claims bills were being banned by the Act, no dollar "limitation should be imposed". And when that language is coupled with a deletion, to which we shall now refer, the absence of any Congressional intent to ban joinder becomes clear.

In House Report No. 1287, 79th Cong., 1st Sess. (1945), accompanying H. R. 181, the statement had been made at page 5:

> "It is intended that the district courts in exercising jurisdiction under this title shall exercise essentially the same type of jurisdiction as district courts exercise concurrently with the Court of Claims of the United States under the Tucker Act (Act of March 3, 1887, 24 Stat. 505; 28 U. S. C. Sec. 41 (20)). The bill therefore does not permit any person to be joined as a defendant with the United States and does not lift the immunity of the United States from tort actions

except as jurisdiction is specifically conferred upon the district courts by this bill. (See *United States v. Sherwood,* 312 U. S. 584 (1941); *Lynn v. United States,* 110 F. (2d) 586, 588 (C. A. A. 5th, 1940); *Waite v. United States,* 57 C. Cls. 546 (1922); *Jackson v. United States,* 27 C. Cls. 74, 84 (1891).) The phrase 'as a court of claims' in section 301 of the Senate bill was deleted as surplusage."[4]

But the above quoted paragraph was deleted in its entirety in Senate Report No. 1400, 79th Cong., 2nd Sess. (1946).

At an apparent loss to explain this deletion, the Government in its brief (Footnote 3, pp. 12-13) dismisses the subject by blandly asserting that this express omission hardly warrants an inference that the view expressed in the House Report had been abandoned by the Senate Committee.

We believe it is apparent that this deletion was deliberate, and not an oversight. In view of the earlier statement on page 30 of the Senate Report,—"and that with respect to this type of claim the Government should be put in the same position as any private party",—the deletion could only confuse unless it was meant to indicate a rejection of the principle of non-joinder. That the deletion was meant not to confuse but rather to demonstrate a Congressional intent becomes clear when it is noted that the substance of all of the paragraphs in House Report No. 1287, which preceded the non-joinder statement there made, were incorporated in Senate Report No. 1400. The Senate Report would hardly have adopted, as it did, all of the statements made in the House Report except that concern-

[4] The limitation was against joinder by a plaintiff of the United States and an individual as co-defendants. Hence, it would not necessarily apply to the present case. Since, however, the government stresses the point, we consider it.

ing non-joinder, unless the non-joinder concept was being discarded.

The court below, having referred to the foregoing, concluded (R. 41):

> "* * * It may be argued with some plausibility, therefore, that the earlier intention of the members of the Judiciary Committee of the House of Representatives to eliminate joinder of the United States was not insisted upon. * * *"

A further indication of Congressional intent is seen in Senate Report No. 1400, 79th Cong., 2nd Sess. (1946). As stated by the court below, (R. 41-42):

> "* * * In referring to the Federal Tort Claims title of S. 2177, S. Rept. 1400 stated that this title was almost identical with that which was incorporated in H. R. 181, with the exception that the $10,000 limitation had been removed. The report said respecting Section 410 of the FTCA, which was the same as Section 301 of H. R. 181: 'The trial will be without a jury as is now the case in suits under the Tucker Act. The liability of the United States will be the same as that of a private person under like circumstance, in accordance with the local law, except that no punitive damages and no interest prior to judgment may be recovered.' **From the foregoing it may be concluded that it was not the intention of Congress to cause the United States to be treated in a different manner from any private litigant in respect to joinder** and that **the feature of the Tucker Act foremost in the mind of Congress was trial to the court without a jury.**"

In the footnote to this statement, the court below, in discussing the argument of the Government bottomed on the inclusion in earlier bills of language providing for pro rata liability of the United States in any case in which it was one of two or more joint tortfeasors, said:

"9. The argument of the United States respecting legislative history may be summed up as follows:

"The Federal Tort Claims Act was included in Title IV Public Law No. 601, enacted by the 2nd Session of the 79th Congress. H. R. 7236, introduced in the 76th Congress 1st Sess., S. 2221 (passed by the Senate) and H. R. 6463 introduced in the 77th Congress 2nd Sess., S. 1114 in the 78th Congress 1st Sess., and H. R. 181 in the 79th Congress are to some degree progenitors of the present Act. Section 403 of H. R. 6463 read as follows: 'If the damage, loss, injury, or death with respect to which a claim is made pursuant to this Act is caused under circumstances creating a legal liability on the part of some person other than an employee of the Government to pay damages therefor, jointly or severally with the United States, the award or judgment against the United States shall be only for the pro rata share of the damages in proportion to the number of parties so jointly or severally liable.' Section 403 of S. 1114 contained substantially the same language. The United States points out that when the FTCA was enacted the language expressly providing for joinder and contribution was omitted. This, it is contended, demonstrates that Congress did not intend that joinder should be made or contribution should be effected.

"We do not find this argument persuasive though, of course, it carries some weight. **We adhere to the view that if Congress had intended to prohibit joinder it would have done so by express mandate in the statute or by unmistakable legislative history in the reports accompanying the legislation as it was enacted.** See the rules for the construction of legislative history as laid down by the Supreme Court of the United States by Mr. Justice Pitney in Duplex Co. v. Deering, 254 U. S. 443, 474-477."

It seems to us that the pro rata liability language appearing in the earlier bills referred to by the court below, and its deletion in the Act as finally adopted, may also be considered as an indication of an ultimate intent to permit joinder. In those earlier bills it was provided that "* * * the Court of Claims and the district courts sitting without a jury, shall have concurrent jurisdiction to hear and determine claims against the United States, not exceeding the sum of * * *". See Hearings before the Committee on the Judiciary, House of Representatives, 77th Cong., 2nd Sess. 1942, on H. R. 5373 and H. R. 6463, p. 2, sec. 301. That language was identical with that in the Tucker Act, Judicial Code, 28 U. S. C. A. section 41 (20), now 28 U. S. C. Section 1346 (a) (2). In view of the doctrine in **United States v. Sherwood**, 312 U. S. 584 (1941), prohibiting joinder of individuals with the United States in claims cognizable under the Tucker Act, it would appear that the pro rata language was necessary in those bills if the Government, when sued alone, was to accomplish in one suit the result about which it complains in the case before this Court.

In any event, whether the pro rata liability language in earlier bills be considered as "expressly providing for joinder", or as we suggest, necessary to produce a pro rata result because joinder was not available, it shows a keen awareness on the part of the draftsmen of the bills of the problems of contribution and joinder. It is reasonable to conclude, therefore, that had Congress intended to deny contribution and to prohibit joinder in the Act it adopted, it would have done so by express mandate in the statute.

In this connection, it is interesting to note that Irvin M. Gottlieb, an attorney for the Claims Division of the Department of Justice, in his Article in the November, 1946 issue of the **Georgetown Law Journal**, p. 36, concluded that:

> "A balancing of the factors evidencing legislative intent, herein set forth, both in favor of and against the joinder of parties hereunder, would seem to favor

the court's permitting joinder in the interest of better administration of justice to all parties concerned."

As we have demonstrated, the legislative history of the Federal Tort Claims Act sustains the view, that even apart from its clear and unambiguous language, joinder of the government as a third party defendant is permissible. However, even if it be conceded that the Committee reports, extending over more than twenty years, are inconclusive, the Government's contention must fall. In view of the broad language in the Act—see **Brooks v. United States**, 337 U. S. 49, 51 (1949); **United States v. Aetna Casualty and Surety Co.**, 338 U. S. 366, 383 (1949),—the reasoning in **Canadian Aviator, Ltd. v. United States**, 324 U. S. 215 (1945) appears clearly applicable.

In the **Canadian Aviator** Case, a shipowner brought suit against the United States contending that liability existed under the provisions of the Public Vessels Act authorizing suits "for damages caused by a public vessel". The complaint alleged that while following directly astern of a public vessel as ordered by naval authorities, complainant's vessel was damaged when it struck a submerged wreck and that the accident resulted solely from the negligence of the public vessel and its crew. The lower court and the Court of Appeals dismissed the suit holding that the phrase in the Act "caused by a public vessel" meant caused by those in charge of the vessel, with the vessel as the "physical" or "noxious" instrument by which the damage was done; that the physical cause was the submerged wreck. Reference was also made to the reports of the Committee which had stated that the "chief purpose of the Act was to authorize recovery in collision cases".

In reversing the Court of Appeals, this Court said, 324 U. S. at 222, 223:

"Respondent contends that § 1 of the Public Vessels Act authorizing suits against the United States

'for damages caused by a public vessel' should be construed to apply only in cases where the public vessel is the 'physical instrument' by which the 'physical damage' is done, e. g. collision; that therefore petitioner's libel does not lie under the Act. Such a construction narrowly limits the Act's relief. We conclude that such a narrow interpretation of the Act is not justifiable. **While the general history of the Act as outlined above does not establish that the statute necessarily extends to the non-collision cases in view of the rule of strict construction of statutory waiver of sovereign immunity,** *United States v. Sherwood,* 312 U. S. 584, 586; *Eastern Transportation Co. v. United States, supra,* we think **Congressional adoption of broad statutory language authorizing suit was deliberate and is not to be thwarted by an unduly restrictive interpretation.** See *The Lake Monroe,* 250 U. S. 246; *Nahmeh v. United States,* 267 U. S. 122, 125-26; *Eastern Transportation Co. v. United States, supra; Federal Land Bank v. Priddy,* 295 U. S. 229, 231."

And at page 225:

> **"The fact that the Committee reports on the bill state that the 'chief purpose' of the Act is to authorize recovery in collision cases, that the departmental letters attached to the report consider principally the 'collision' situation, does not require that the statute should be so limited. * * *"**

In the instant case, the legislative history shows no intent to relieve the United States from liability to contribution to a joint tortfeasor, nor does it show an intent to prohibit joinder. Indeed, if anything, the history shows the contrary. And, in any event, the broad language of the Act is controlling.

II.

THE GOVERNMENT'S FEARS AS TO POSSIBLE PROCEDURAL DIFFICULTIES IN OTHER CASES FURNISH NO BASIS FOR JUDICIAL AMENDMENT OF THE ACT.

The Government endeavors to avoid the liability for contribution imposed by the broad language in the Tort Claims Act by conjuring up conceivable procedural difficulties which may arise in other cases. Even assuming *arguendo* that such other cases might present procedural difficulties, they furnish no justification for judicial amendment of the Act, however much they might justify legislative correction in the future. We pass to a consideration of these procedural "problems", admittedly none of which is present in this case.

A. The Non-Jury Provisions in the Act.

The Government argues that the fact that the Tort Claims Act provides for trial without a jury demonstrates that impleader of the United States by the individual defendant to protect his right to contribution was not contemplated. (Government Brief pp. 6; 16-19.) The Government argues that if the plaintiff or the original defendant were to have demanded a trial by jury, there would be "the incongruous possibility of divergent determinations on identical issues of fact and liability" (p. 17).

A complete answer to this contention was given by the Court below (R. 39):

> "• • • Had a jury been insisted on by the private defendant in the instant case there was no valid reason why the trial judge and the jury respectively should not have determined the liability of the United States and that of the private defendant. Cf. Elkins v. Nobel, (D. C. N. Y.) 1 F. R. D. 357."

That is exactly what was done in **Englehardt v. United States, et al.**, 69 F. Supp. 451 (D. C. Md., 1947),—apparently to the satisfaction of the Government. In a speech at the Missouri Bar District Meeting in St. Louis, Missouri, on February 27, 1948, Judge Collet of the United States Court of Appeals for the Eighth Circuit, pointed out, respecting the **Englehardt** case, 8 F. R. D. 3: "The Government did not appeal this case, but I learned that the individual defendant promptly paid one-half of the judgment."

Moreover, there was no jury complication in the instant case.

B. The Venue Provisions of the Act.

The Government argues that the provision that suit be brought in the district where the plaintiff resides or where the act or omission occurred shows that "joinder of the United States as a third-party defendant may be seen to have been beyond the legislative intent." It is argued that the question whether the Act refers to the residency of the plaintiff or the third-party plaintiff arises, and since it is not answered by the Act, Congress clearly did not have third-party plaintiffs in mind. (Government Brief, pp. 21-22.)

The argument answers itself. It amounts to an assertion that in the face of the broadest kind of language waiving sovereign immunity, recovery should be denied, despite the fact that liability in such cases is clearly contemplated and not included in any of 12 excepted categories, merely because the Act is not drawn to provide in detail for every procedural problem which might arise. No authority is cited for any such proposition, and of course there is none.

The argument was equally applicable to insurance carrier subrogees. And this Court was not persuaded by it in **United States v. Aetna Casualty & Surety Co.**, 338 U. S. 366 (1949).

Actually, no problem arose in this case respecting this question; and none would arise in the overwhelming majority of cases under the Act. If it ever did, the question of construction would then have to be decided.

C. The Permissive Appeal to the Court of Claims Provided in the Act.

The Tort Claims Act provided for review by appeal to the Circuit Courts of Appeals in the same manner as other judgments of the district courts, and then provided in the alternative for appeals to the Court of Claims on condition that "all of the appellees" consent in writing. U. S. Code, 1946 Ed., Title 28, Section 933 (now Section 1504 of revised Title 28, United States Code).

It is argued by the Government that the permissive provision allowing appeals to the Court of Claims shows that Congress intended "to create only the same type of jurisdiction as that existing under the Tucker Act" (Government Brief, 19-21).

The Government's argument amounts to assertion of a rule of statutory construction that would be unique indeed in its operation. It would provide: if in a statute of general application, appeals are permitted to a court of general jurisdiction, and in the alternative, on consent of all parties, to a court of special jurisdiction as well, the statute must be construed as not applying to any case in which appeals are not permissible to the court of special jurisdiction. Here again no authority is cited. We assert with confidence there is no authority for any such far-fetched contention.

The court below conceded that the argument in somewhat different form had weight (R. 40),[5] but this was only

[5] The court below put aside, apparently since the issue was not involved in this case, questions as to the power of Congress to have provided at all for an appeal from an

when the court was preliminarily considering the cases as though the issue were whether the United States and an individual could be joined initially as co-defendants by the plaintiff. When the Court considered the cases in their actual setting, the court said (R. 44):

> "* * * Separate suits could have been filed against the United States by Yellow Cab, the United States being the sole defendant, and judgments of contribution could thus have been obtained by Yellow Cab. The principle of United States v. Sherwood, 312 U. S. 584, 587-8, arising under the Tucker Act, would be inapplicable even by way of analogy for such judgments would have been obtained in suits in which the United States was the sole defendant. In the instant cases the learned trial judge could have terminated the proceedings after judgments had been rendered in favor of the Gutmanns and the Howeys against Yellow Cab, and then could have proceeded to give separate trials to the United States on the issue of contribution. Surely the stricture of the Sherwood case, even if it were deemed to be applicable to cases involving joinder of the United States arising under the FTCA, would not serve to require second, separate trials with the United States as the sole defendant, the issue being one of contribution, for such second, separate trials would embrace the same evidence as that already received and would be conducted before the same judge. Cf. United States v. Aetna Surety Co., *supra*."

Article III court to an Article IV court or to have conferred upon the Court of Claims of the United States in the terms of Section 412 "* * * the same powers and duties [respecting appeals] as those conferred on a * * * court of appeals".

D. The United States Will Not Be Required to Defend the Same Suit Twice if Impleader and Joinder Are Permitted.

The Government argues that if it is liable to contribution it may successfully defend a suit brought by the injured person against it alone, and later be subject to a second suit for contribution after the injured person makes a recovery against the individual tortfeasor. (Government Brief, 40, 41; 52.) That is exactly what may happen in cases of partial subrogees. As Chief Justice Vinson stated in **United States v. Aetna Casualty & Surety Co.**, 338 U. S. 366, 382:

> "It is true that under this rationale, there will be cases in which all parties cannot be joined because one or more are outside the jurisdiction, and the court may nevertheless proceed in the action under Rule 19 (b). In such cases the United States, like other tortfeasors, may have to defend two or more actions on the same tort * * *."

Moreover, this argument of the Government is, we suggest, one of the strongest in favor of joinder or impleader.

In automobile collision cases, which will make up the bulk of litigated claims in which this problem will arise, all of the States and the District of Columbia have statutes providing for service on non-resident motorists. See compilation in C. C. H., Insurance Law Reporter, Sec. 902,001, et seq. Hence, like any private individual, the United States, if sued alone, will be able to implead a non-resident wrongdoer as a third-party defendant except in the rare unusual case.

Similarly, if joinder is permitted, the plaintiff will commence the suit in a district in which he can serve the individual defendant. And even in those cases in which joinder would not be proper because of the lack of diversity

between the plaintiff and the individual defendant, the United States, sued alone, may implead the individual defendant under Rule 14 (a).

Joinder and impleader, therefore, will forestall the possibility of the United States, sued alone initially by the injured person, being required later to defend in a second suit for contribution.

III.

CONTRIBUTION LIKE SUBROGATION RESTS NOT ON CONTRACT BUT ON GENERAL PRINCIPLES OF EQUITY.

In its brief, the Government attempts to distinguish the equity of subrogation from that of contribution, in an effort to convince this Court that its decision in **United States v. Aetna Casualty & Surety Co.**, 338 U. S. 366 (1949), has no application to this case, by analogy or otherwise.

But the right to contribution, like that of subrogation, rests not on contract but on general principles of equity. **Bispham's Principles of Equity**, 10th Ed., Section 338, and cases therein cited; **Southern Surety Co., et al. v. Commercial Casualty Ins. Co., et al.**, 31 F. (2d) 817 (C. A. 3rd, 1929), cert. denied, 280 U. S. 577 (1929); **Aetna Life Ins. Co. v. Middleport**, 124 U. S. 534, 549 (1888); **Prairie State Bank v. United States**, 164 U. S. 227, 231 (1896); **Hoover v. Epler**, 52 Pa. 522, 524 (1866); **Goldman, et al. v. Mitchell-Fletcher Co.**, 292 Pa. 354-357, 358 (1928).

Chancellor Kent, in **Cheesebrough v. Millard**, 1 Johns. Ch. 413 (1815), said that subrogation is a rule "founded in natural justice, and I believe it is recognised in every cultivated system of jurisprudence. * * * It rests on the basis of mere equity and benevolence."

Chancellor Johnson, in **Gadsden v. Brown**, Speer's Eq. (So. Car.) 37, 41 (1843), said that "The doctrine of subrogation is a pure, unmixed equity, having its foundation in

the principles of natural justice." This statement of Chancellor Johnson was cited by this Court in **Aetna Life Ins. Co. v. Middleport**, 124 U. S. 534, 549 (1888), and in **Prairie State Bank v. United States**, 164 U. S. 227, 231 (1896).

In **Southern Surety Co., et al. v. Commercial Casualty Ins. Co.**, 31 F. (2d) 817 (C. A. 3rd, 1929), cert. denied, 280 U. S. 577 (1929), the court, in considering the nature of contribution, said, pp. 818, 819:

> "'The cases are numerous and comparatively uniform that where the parties do not stand in equali jure there can be no contribution. **Equality in bearing a common burden is the principle upon which contribution rests. It does not rest on contract, but on the broad principle that equality is equity**; and where a number of parties stand on the same footing as to liability, one of the number cannot be compelled to assume the whole burden, but may compel his associates to share with him in the loss which he is compelled to pay. Stone v. Fenno, 88 Mass. (6 Allen, 579); Bulkeley v. House, 62 Conn. 459, 26 A. 352, 21 L. R. A. 247; Turk v. Newark Fire Ins. Co. (D. C.) 4 F. (2d) 142; Meigs v. Insurance Co., 205 Pa. 378, 54 A. 1053; King v. Lancaster County Mut. Ins. Co., 45 Pa. Super. Ct. 464; 5 Pom. Eq. Juris, par. 2338, p. 5169."

We submit, therefore, that since contribution and subrogation are both doctrines founded on principles of equity and natural justice, the decision of this Court in **United States v. Aetna Casualty & Surety Co.**, 338 U. S. 366, is of considerable authority in determining the applicability of the Tort Claims Act to contribution cases.

In this portion of our argument, we feel constrained to direct the attention of the Court to certain statements made by the Government which we think do not accurately state the law.

In its brief at page 52, the Government states that "because the subrogee stands in the shoes of the subrogor, a release by the subrogor bars suits by the subrogee". That statement is certainly not accurate.

In the first place, absent statutory provisions to the contrary, the right of subrogation, like that of contribution, does not arise until after payment. **Restatement of the Law of Restitution** Sections 77, 86; **Blashfield, Cyc. of Automobile Law Practice**, Vol. 6, Section 4171, page 416, and Section 4181, page 427. Accordingly, in the type of case to which the Government refers in its brief, if the owner of an automobile covered by a policy of collision insurance releases his right of action against the wrongdoer before settlement with the insurer, that release destroys, by operation of law, his right of action on the policy. **Service Fire Ins. Co. v. Powell**, 70 Ga. App. 213, 27 S. E. 2nd 896 (1943); **Universal Credit Co. v. Service Fire Ins. Co. of New York**, 69 Ga. App. 357, 25 S. E. 2nd 526 (1943); **Auto Owners' Protective Exchange of Kankakee v. Edward**, 82 Ind. App. 558, 136 N. E. 577 (1922); **Farmer v. Union Ins. Co. of Indiana**, 146 Miss. 600, 111 So. 584 (1927); **Maryland Motor Car Ins. Co. v. Haggard**, Civ. App. Tex., 168 S. W. 1011 (1914).

If the release by the subrogor is executed after the carrier has made payment under its policy, the wrongdoer does so at his own risk if he has been put on notice of the interest of the subrogee. **Smith v. Yellow Cab Co.**, 288 Pa. 85 (1927).

In the **Smith** case, an employer had paid to his employe the sums required by the Workmen's Compensation Law. By that law the employer had become subrogated, to the extent of the payments, to the right of the employe against the wrongdoer. Notice of the payments and of the subrogee's interest was served upon the wrongdoer. Thereafter, the wrongdoer took a release in full from the injured employe. In holding that the release by the employe did

not bar suit by the subrogee-employer against the wrongdoer, the court said, 288 Pa., pp. 90, 91:

> "* * * the explicit written notice to defendant, which admittedly was received, was sufficient, under the facts of the instant case, to preserve the employer's right: Fire Assn. of Phila. v. Wells, 84 N. J. Eq. 484; Powell v. Wake Water Co., 171 N. C. 290; Cushman, etc. v. Boston, etc., Ry., 82 Vt. 390; Annotated Cases 1917 A, 1298-1300, note."

It is just incorrect to state, as the Government does, that a release by the subrogor bars suit by the subrogee.

The Government also argues that if it is one of two joint tortfeasors and takes a release from the injured person, that person may subsequently institute suit against the individual tortfeasor and, after successful prosecution of that suit, the individual tortfeasor may later sue the Government for contribution (Government Brief, pp. 40-42; 52). Hence, concludes the Government, "a release from the injured person does not afford the same protection against a suit for contribution" as does a release by the subrogor (Government Brief, p. 52).

We believe we have shown the inaccuracy of the Government's broad assertion that a release by the subrogor bars suit by the subrogee. We shall now demonstrate that the Government's statement as to the effect of a release to a joint tortfeasor is likewise misleading.

In the first place, contribution between joint tortfeasors is not a substantive legal right in all states. In several states contribution between tortfeasors exists only if the injured person secures a joint judgment against the tortfeasors, e. g. Maryland Code (1939) Art. 53, Section 13; New York Civil Practice Act (1941), Section 211a; Texas Revised Statutes (Vernon 1936) Art. 2212. And in most states, including Pennsylvania, a release of one joint

tortfeasor releases all. See Annotation 50 A. L. R. 1058 et seq.

It follows, of course, that where the right to contribution does not exist, or where a joint judgment is a prerequisite, or where a release of one joint tortfeasor releases the others, the Government will never be liable once it has secured a valid release. Moreover, the Government misconceives the meaning of Section 5 of the Uniform Contribution Among Tort Feasors Act, 9 Uniform Laws Annotated 161, and Pocket Part, page 28, and overlooks the provisions of Section 4 of that Act. (The Act has been adopted in Kansas, Maryland, New Mexico, Rhode Island and South Dakota only.)

Section 4 of that Act provides, 9 U. L. A. 164, "A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors **unless the release so provides;** * * *". Accordingly, even in the five states in question, all the Government has to do to protect itself completely is to provide in the release that the injured person releases not only the Government but the other tortfeasor as well.

Section 5 of that Act, 9 U. L. A. 165,[6] was not placed in the Act as a contradiction of Section 4, but was added out of an abundance of caution on the part of the draftsmen. The Commissioners' Note, Section 5, states 9 U. L. A. 165:

"Although the substance of this Section would probably be recognized anyway by courts allowing con-

[6] "§ 5. *Release; Effect on Right of Contribution.*—A release by the injured person of one joint tortfeasor does not relieve him from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all the other tortfeasors."

tribution among tortfeasors under the previous sections of this Act, it seems advisable nevertheless to include it. Under it, an injured person, acting in collusion with or out of sympathy for one of the tortfeasors, cannot relieve him from the obligation to contribute to the other tortfeasors by releasing him. The only way in which such a release can free the released tortfeasor from his duty to contribute is to include a provision to the effect that the other tortfeasors shall be released from the injured person's pro rata share of the common liability."[7]

A valid release from an injured person affords the same protection against a suit for contribution as a release by the subrogor against a suit by the subrogee.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the judgments below should be affirmed.

Respectfully submitted,

WM. A. SCHNADER,
BERNARD G. SEGAL,
JAMES J. LEYDEN,
Attorneys for Respondent.

SCHNADER, HARRISON, SEGAL & LEWIS,
1719 Packard Building,
Philadelphia 2, Pa.,
Of Counsel.

---

[7] This Act has not been adopted in Pennsylvania and therefore the discussion is not pertinent to the instant cases in any event. We comment upon the Government's misinterpretation of the Act only because we are replying to each of the Government's contentions, whether or not we consider them relevant or applicable.

APPENDIX.

The Federal Tort Claims Act of 1946, 60 Stat. 842, U. S. Code, 1946 Ed., Title 28, reads as follows:

CHAPTER 20.—FEDERAL TORT CLAIMS.

SUBCHAPTER I. ADMINISTRATIVE ADJUSTMENT OF TORT CLAIMS AGAINST THE UNITED STATES.

Sec.
921. Settlement of claims of $1,000 or less; conclusiveness; appropriations.
922. Reports to Congress.

SUBCHAPTER II. SUITS ON TORT CLAIMS AGAINST THE UNITED STATES.

931. Jurisdiction; liability of United States; judgment; election by claimant; amount of suit; administrative disposition as evidence.
932. Procedure.
933. Review.
934. Compromise and settlement of suits.

SUBCHAPTER III. MISCELLANEOUS PROVISIONS.

941. Definitions.
942. Statute of limitations.
943. Claims exempted from operation of chapter.
944. Attorney's fees; penalties.
945. Exclusiveness of chapter.
946. Laws unaffected.

SUBCHAPTER I. ADMINISTRATIVE ADJUSTMENT OF TORT CLAIMS AGAINST THE UNITED STATES.

§ 921. *Settlement of claims of $1,000 or less; conclusiveness; appropriations.*

(a) Subject to the limitations of this chapter, authority is conferred upon the head of each Federal agency, or his designee for the purpose, acting on behalf of the United States, to consider, ascertain, adjust, determine, and settle any claim against the United States for money only, accruing on and after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death, where the total amount of the claim does not exceed $1,000, caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death, in accordance with the law of the place where the act or omission occurred.

(b) Subject to the provisions of subchapter II of this chapter, any such award or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud, notwithstanding any other provision of law to the contrary.

(c) Any award made to any claimant pursuant to this section, and any award, compromise, or settlement of any claim cognizable under this chapter made by the Attorney General pursuant to section 934 of this title, shall be paid by the head of the Federal agency concerned out of appropriations that may be made therefore, which appropriations are hereby authorized.

(d) The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on

the claimant, and shall constitute a complete release by the claimant of any claim against the United States and against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter. (Aug. 2, 1946, ch. 753, title IV, § 403, 60 Stat. 843.)

CODIFICATION.

Chapter was not enacted as a part of the Judicial Code.

SHORT TITLE.

Congress in enacting this chapter provided by section 401 of act Aug. 2, 1946, cited to text, that it should be popularly known as the "Federal Tort Claims Act".

REPEALS.

Section 424 (a) of act Aug. 2, 1946, cited to text, provided in part that: "All provisions of law authorizing any Federal agency to consider, ascertain, adjust, or determine claims on account of damage to or loss of property, or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, are hereby repealed in respect of claims cognizable under part 2 of this title [subchapter I of this chapter] and accruing on and after January 1, 1945."

§ 922. *Reports to Congress.*

The head of each Federal agency shall annually make a report to the Congress of all claims paid by such Federal agency under this subchapter. Such report shall include the name of each claimant, a statement of the amount claimed and the amount awarded, and a brief description of the claim. (Aug. 2, 1946, ch. 753, title IV, § 404, 60 Stat. 843.)

SUBCHAPTER II. SUITS ON TORT CLAIMS AGAINST THE UNITED STATES.

§ 931. *Jurisdiction; liability of United States; judgment; election by claimant; amount of suit; administrative disposition as evidence.*

(a) Subject to the provisions of this chapter, the United States district court for the district wherein the plaintiff is resident or wherein the act or omission complained of occurred, including the United States district courts for the Territories and possessions of the United States, sitting without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on any claim against the United States, for money only, accruing on and after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred. Subject to the provisions of this chapter, the United States shall be liable in respect of such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances, except that the United States shall not be liable for interest prior to judgment, or for punitive damages. Costs shall be allowed in all courts to the successful claimant to the same extent as if the United States were a private litigant, except that such costs shall not include attorneys' fees.

(b) The judgment in such an action shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the Government whose act or omission gave rise to the claim. No suit shall be instituted pursuant to this section upon a

claim presented to any Federal agency pursuant to subchapter I of this chapter unless such Federal agency has made final disposition of the claim: *Provided*, That the claimant may, upon fifteen days' notice given in writing, withdraw the claim from consideration of the Federal agency and commence suit thereon pursuant to this section: *Provided further*, That as to any claim so disposed of or so withdrawn, no suit shall be instituted pursuant to this section for any sum in excess of the amount of the claim presented to the Federal agency, except where the increased amount of the claim is shown to be based upon newly discovered evidence not reasonably discoverable at the time of presentation of the claim to the Federal agency or upon evidence of intervening facts, relating to the amount of the claim. Disposition of any claim made pursuant to said subchapter shall not be competent evidence of liability or amount of damages in proceedings on such claim pursuant to this section. (Aug. 2, 1946, ch. 753, title IV, § 410, 60 Stat. 843.)

§ 932. *Procedure.*

In actions under this subchapter, the forms of process, writs, pleadings, and motions, and the practice and procedure, shall be in accordance with the rules promulgated by the Supreme Court pursuant to sections 723b and 723c of this title; and the same provisions for counterclaim and set-off, for interest upon judgments, and for payment of judgments, shall be applicable as in cases brought in the United States district courts under sections 41 (20), 250 (1), (2), 251, 254, 257, 258, 287, 289, 292, 761-765 of this title. (Aug. 2, 1946, ch. 753, title IV, § 411, 60 Stat. 844.)

§ 933. *Review.*

(a) Final judgments in the district courts in cases under this subchapter shall be subject to review by appeal—

(1) in the circuit courts of appeals in the same manner and to the same extent as other judgments of the district courts; or

(2) in the Court of Claims of the United States; *Provided*, That the notice of appeal filed in the district court under rule 73 of the Rules of Civil Procedure following section 723c of this title shall have affixed thereto the written consent on behalf of all the appellees that the appeal be taken to the Court of Claims of the United States. Such appeals to the Court of Claims of the United States shall be taken within three months after the entry of the judgment of the district court, and shall be governed by the rules relating to appeals from a district court to a circuit court of appeals adopted by the Supreme Court pursuant to sections 723b and 723c of this title. In such appeals the Court of Claims of the United States shall have the same powers and duties as those conferred on a circuit court of appeals in respect to appeals under section 226 of this title.

(b) Sections 346 and 347 of this title, shall apply to cases under this part in the circuit courts of appeals and in the Court of Claims of the United States to the same extent as to cases in a circuit court of appeals therein referred to. (Aug. 2, 1946, ch. 753, title IV, § 412, 60 Stat. 844.)

§ 934. *Compromise and settlement of suits.*

With a view to doing substantial justice, the Attorney General is authorized to arbitrate, compromise, or settle any claim cognizable under this subchapter, after the institution of any suit thereon, with the approval of the court in which such suit is pending. (Aug. 2, 1946, ch. 753, title IV, § 413, 60 Stat. 845.)

SUBCHAPTER III. MISCELLANEOUS PROVISIONS.

§ 941. *Definitions.*

As used in this chapter, the term—

(a) "Federal agency" includes the executive departments and independent establishments of the United States, and corporations whose primary function is to act as, and while acting as, instrumentalities or agencies of the United

States, whether or not authorized to sue and be sued in their own names: *Provided*, That this shall not be construed to include any contractor with the United States.

(b) "Employee of the Government" includes officers or employees of any Federal agency, members of the military or naval forces of the United States, the persons acting on behalf of a Federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

(c) "Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States, means acting in line of duty. (Aug. 2, 1946, ch. 753, title IV, § 402, 60 Stat. 842.)

§ 942. *Statute of limitations.*

Every claim against the United States cognizable under this chapter shall be forever barred, unless within one year after such claim accrued or within one year after August 2, 1946, whichever is later, it is presented in writing to the Federal agency out of whose activities it arises, if such claim is for a sum not exceeding $1,000; or unless within one year after such claim accrued or within one year after August 2, 1946, whichever is later, an action is begun pursuant to subchapter II of this chapter. In the event that a claim for a sum not exceeding $1,000 is presented to a Federal agency as aforesaid, the time to institute a suit pursuant to subchapter II of this chapter shall be extended for a period of six months from the date of mailing of notice to the claimant by such Federal agency as to the final disposition of the claim or from the date of withdrawal of the claim from such Federal agency pursuant to section 931 of this title, if it would otherwise expire before the end of such period. (Aug. 2, 1946, ch. 753, title IV, § 420, 60 Stat. 845.)

§ 943. *Claims exempted from operation of chapter.*

The provisions of this chapter shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(d) Any claim for which a remedy is provided by sections 741-752, or 781-790 of Title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1-38 of Appendix to Title 50.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Any claim arising from injury to vessels, or to the cargo, crew, or passengers of vessels, while passing through the locks of the Panama Canal or while in Canal Zone waters.

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority. (Aug. 3, 1946, ch. 753, title IV, § 421, 60 Stat. 845.)

§ 944. *Attorney's fees; penalties.*

The court rendering a judgment for the plaintiff pursuant to subchapter II of this chapter, or the head of the Federal agency or his designee making an award pursuant to subchapter I of this chapter, or the Attorney General making a disposition pursuant to section 934 of this title, as the case may be, may, as a part of the judgment, award, or settlement, determine and allow reasonable attorney's fees, which, if the recovery is $500 or more, shall not exceed 10 per centum of the amount recovered under subchapter I of this chapter, or 20 per centum of the amount recovered under subchapter II of this chapter, to be paid out of but not in addition to the amount of judgment, award, or settlement recovered, to the attorneys representing the claimant. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be subject to a fine of not more than $2,000 or imprisonment for not more than one year, or both. (Aug. 2, 1946, ch. 753, title IV, § 422, 60 Stat. 846.)

§ 945. *Exclusiveness of chapter.*

From and after August 2, 1946, the authority of any Federal agency to sue and be sued in its own name shall not be construed to authorize suits against such Federal agency on claims which are cognizable under subchapter II of this chapter, and the remedies provided by this chapter in such cases shall be exclusive. (Aug. 2, 1946, ch. 753, title IV, § 423, 60 Stat. 846.)

§ 946. *Laws unaffected.*

Nothing contained in this chapter shall be deemed to repeal any provision of law authorizing any Federal agency to consider, ascertain, adjust, settle, determine, or pay any claim on account of damage to or loss of property or on account of personal injury or death, in cases in which such damage, loss, injury, or death was not caused by any negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment, or any other claim not cognizable under subchapter I of this chapter. (Aug. 2, 1946, ch. 753, title IV, § 424 (b), 60 Stat. 847.)

CODIFICATION.

Section comprised subsec. (b) of section 424 of act Aug. 2, 1946, cited to text. Subsec. (a) of said section is set out as a note under section 921 of this title.